Co., 144 Ind. 459, 43 N. E. 447; *Alabama & Vicksburg Ry. Co.* v. *Williams*, 78 Miss. 209, 28 So 853 Some courts have held that a statute giving mutual rights of inheritance to an illegitimate child and its mother manifests a broad policy or the legislature to abridge the legal distinction between legitimate and illegitimate offspring, and have accordingly enlarged the sense of the death statute to include the case of the illegitimate child. *Marshall* v. *Wabash R. R. Co.*, 120 Mo. 275, 25 S. W. 179; *Security Title Co.* v. *West Chicago R. R. Co.*, 91 Ill. App. 332. The argument is that statutes should be construed as beneficially as possible and that the courts should hesitate to restrict the scope of progressive legislation. See SEDGWICK, STATUTORY CONSTRUCTION, 2 ed., 308, 311. See Roscoe Pound, "Common Law and Legislation," 21 HARV. L. REV. 383, 407. But incapacity to inherit is only one consequence of illegitimacy. It would not, therefore, seem proper to find in a statute aimed at this evil an expression of general policy which would justify the court in enlarging the scope of the death act. *Atkinson* v. *Anderson*, 21 Ch. 100. See *Commonwealth* v. *Herrick*, 6 Cush. (Mass.) 465. The harsh result of the principal case is unavoidable. *Robinson* v. *Georgia Railroad, etc. Co.*, 117 Ga. 168, 43 S. E. 452.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — FEDERAL AGENCY: STATE TAXATION OF INCOME FROM LEASES OF INDIAN LANDS. — By statute Oklahoma taxes the entire net income of every person in the state from whatever source derived, except such as is exempt by some law of the United States or of the state. (1915 OKLA. SESSION LAWS, c. 164.) The defendant was an instrumentality used by the United States to carry out its duties to the Indians. Proceedings were instituted under the statute to hold the defendant liable for the net income which he derived as lessee of restricted Indian lands. *Held*, that the tax is invalid. *Gillespie* v. *Oklahoma*, U. S. Sup. Ct., Oct. Term, 1921, No. 322.

Where a state purports to levy a tax on income derived from interstate commerce, a distinction is taken between a tax on gross and one on net income. The former is in reality an excise upon the act of engaging in interstate commerce and therefore prohibited. See Thomas R. Powell, "Indirect Encroachment on Federal Authority," 32 HARV. L. REV. 374, 377. But a tax on net income may be upheld as a property tax on the net income itself. *United States Glue Co.* v. *Oak Creek*, 247 U. S. 321. In the principal case, it was argued that whereas in previous cases invalidating taxes on income derived from Indian lands, the taxes had been on gross income, the present tax should, by analogy, be upheld. But property engaged in interstate commerce is subject to state taxation. *Marye* v. *Baltimore & O. R. R. Co.*, 127 U. S. 117, 123; *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18. On the other hand, the leases from which the present income was derived are not. *Indian Territory Illuminating Co.* v. *Oklahoma*, 240 U. S. 522. This differentiates the cases, for where property from which income is derived is not taxable, the income itself must be exempt. *Opinion of the Justices*, 53 N. H. 634; *State Bank* v. *Commonwealth*, 9 Bush. (Ky.) 46. *Cf. Peck & Co.* v. *Lowe*, 247 U. S. 165; *Weston* v. *City Council of Charleston*, 2 Pet. (U. S.) 449. The court was, therefore, correct in refusing to follow the supposed analogy.

TAXATION — WHERE PROPERTY MAY BE TAXED — INCOME — EFFECT OF CHANGE OF DOMICIL. — A was domiciled in New York until January, 1918, when she acquired a domicil in Massachusetts. An income tax was assessed and collected in Massachusetts based on a return showing the income A had received in 1917. She brings proceedings for abatement on the ground that it was beyond the jurisdiction of Massachusetts to levy the tax. *Held*, that

A is entitled to the abatement. *Hart* v. *Tax Commissioner*, 132 N. E. 621 (Mass.).

For a discussion of the principles involved, see NOTES, *supra*, p. 876.

TROVER AND CONVERSION — MISDELIVERY BY A BAILEE — INVOLUNTARY BAILMENT. — The plaintiff, under a contract to deliver the X bond to the defendant, delivered the Y bond instead. The delivery was made by a messenger, who dropped the bond through a receiving slot on to the defendant's desk. The latter promptly opened an opaque window opening into the corridor from which the delivery was made, and gave the bond to a stranger, who answered when the defendant called the name of the plaintiff's firm. The plaintiff sued for a conversion. *Held*, that the plaintiff recover. *Cowen* v. *Pressprich*, 192 N. Y. Supp. 242 (Sup. Ct.).

For a discussion of the principles involved, see NOTES, *supra*, p. 873.

WILLS — CONSTRUCTION — DETERMINATION OF CLASSES. — The testator devised a part of his estate to M for life, and then to her issue, and if she should leave no issue, then to the testator's next of kin, to be divided among them equally, *per stirpes*. M was one of three next of kin at the testator's death. Upon the death of M, without issue, the trustee brings a bill for construction of the above will. *Held*, that although the next of kin as a class are determined at the death of the testator, M is excluded therefrom. *Close* v. *Benham*, 115 Atl. 626 (Conn.).

Where there is a gift over to the testator's heirs or next of kin after a life estate, and no contrary intent appears, the class is determined as at the death of the testator, thus giving the words their natural meaning and conducing to the early vesting of estates. *Holloway* v. *Holloway*, 5 Ves. 399; *Stokes* v. *Van Wyck*, 83 Va. 724, 3 S. E. 387. See THEOBALD, WILLS, 7 ed., 340. The fact that the life tenant is the sole heir or next of kin does not militate against this rule of construction. *Himmel* v. *Himmel*, 294 Ill. 557, 128 N. E. 641; *Dove* v. *Torr*, 128 Mass. 38. And if, as in the principal case, he is only one of several next of kin, there is still less reason for deducing from the terms of the devise an intent to exclude him from the class. *Tuttle* v. *Woolworth*, 62 N. J. Eq. 532, 50 Atl. 445; *In re Winn*, [1910] 1 Ch. 278. The testator may well have desired to limit the remainder to the life tenant's issue, before throwing open the estate upon default of such issue, to the general heirs of the life tenant. See KALES, ESTATES, FUTURE INTERESTS, ETC., 2 ed., § 572. In fact the general rule is sometimes followed in spite of special context suggesting a contrary intent. *Brown* v. *Brown*, 253 Ill. 466, 97 N. E. 680. See 8 ILL. L. REV. 121. See also KALES, CASES ON FUTURE INTERESTS, 372, n. It is not, however, followed where obvious incongruity would result, *e. g.*, where the first taker is given a fee, divested of it by the condition, and then as sole heir revested in it by the gift over. *Welch* v. *Brimmer*, 169 Mass. 204, 47 N. E. 699. See 11 HARV. L. REV. 346. The instant case, in excluding the life tenant from among the next of kin, is an example of the undesirable tendency in some American courts to invent an intent where none appears, instead of applying a settled rule of construction. See GRAY, NATURE AND SOURCES OF LAW, 2 ed., 173–176. See also 30 HARV. L. REV. 372.